

Attorney Docket No. P12384
Customer Number 27045

REMARKS/ARGUMENTS

1.) Claim Amendments

The Applicant has amended claims 1, 3-4, 8, 10-12, 14-15, 19, 21-23, 25-26, 30-33. Accordingly, claims 1-33 are pending in the application. Favorable reconsideration of the application is respectfully requested in view of the foregoing amendments and the following remarks.

2.) Detailed Action

The Examiner noted that line numbers in the claims were not in a preferred format. It is respectfully submitted that this response is accordance with the current rules regarding amendment practice. If the Examiner believes any part of this response is not in conformance, the Examiner is invited to telephone the Applicant's attorney at the number below.

3.) Claim Rejections – 35 U.S.C. § 102(e)

The Examiner rejected claims 1-2, 3, 4-5, 6, 8-9, 11, 12-13, 15-16, 17, 19-24, 25-28, 30 and 31-33 under 35 U.S.C. § 102(e) as being anticipated by NLNR: Engineering Services, 1999 (NLNR). The Applicant has amended claims to better define the intended scope of the claimed invention. The Examiner's consideration of the amended claims is respectfully requested.

To the extent that the Examiner still maintains this rejection, the Applicant respectfully traverses this rejection.

For instance, amended claim 1 states:

1. A method for dynamically controlling individual data flows comprising data packets to a terminal in a communications system, said data flows being carried over at least one communications connection with a predetermined bandwidth and with use of at least one protocol which has parameters, said method including the steps of:
providing an viewable interface to display at least one or more of the individual data flows to different applications on the terminal;
providing a viewable interface to accept a priority for each of the individual data flows;

Attorney Docket No. P12384
Customer Number 27045

storing information regarding the priority in a memory of the terminal; and
controlling, through manipulation of at least one protocol parameter, a bandwidth proportion of an available bandwidth used by the individual data flows based on said stored information.

It is respectfully submitted that nothing in NLANR teaches a *dynamic* method of controlling flows where comprising: providing an viewable interface to display at least one or more of the individual data flows to different applications on the terminal; providing a viewable interface to accept a priority for each of the individual data flows, then controlling a bandwidth by the individual data flows based on the priority information. The Applicant acknowledges that TCP contains some dynamic flow controls. However, NLANR refers to "tuning" a network "that affect all user and applications on a given system." (General Comments on Tuning, page 1, lines 17). The claimed invention is only applicable for a single user using a single terminal.

If a single user must be "tuned", then according to NLANR, this requires changes to the application code. (General Comments on Tuning, page 1, line 18). Such changes to the application code would not be user adjustable nor dynamic. In contrast, the claimed invention is a dynamic method.

The Applicant, therefore respectfully requests that the Examiner withdraw the §102 rejection of claim 1. Claims 8, 12, 19, 23, and 30 have also been amended and are patentable for similar reasons. Thus, the Examiner's consideration of these claims is also requested.

Claims 2-6, 9, 11, 13, 15-16, 17, 20-24, 25-28 depend from the amended independent claims and recite further limitations in combination with the novel elements of the independent claims. Therefore, the allowance of the dependent claims is respectfully requested.

4.) Claim Rejections – 35 U.S.C. § 103(a)

The Examiner rejected claims 7, 18 and 29 under 35 U.S.C. § 103(a) as being unpatentable over NLANR in view of "Official Notice". The Applicant has amended the independent claims 1, 15 and 23 for which these claims depend. The Examiner's consideration of the amended claims is respectfully requested.

Amendment - 13 of 14
EUS/J/P/04-8873

Attorney Docket No. P12384
Customer Number 27045

If the Examiner is maintaining his use of Official Notice in light of the amended claims, then the Applicant respectfully objects to the use of Official Notice. As the Examiner is aware, if the Applicant does not object to the use of Official Notice in this response, it may be deemed that the Applicant has waived such use.

Under MPEP § 2144.03, Official Notice may only be taken of "facts outside of the record which are capable of instant and unquestionable demonstration as being 'well-known' in the art." When a rejection is based on facts within the personal knowledge of the Examiner, the facts must be as specific as possible, and the reference must be supported, when called for by the Applicant, by an affidavit of the Examiner, which may be subject to explanation by the Applicant. See also 37 CFR 1.104(d)(2). Pursuant to 37 CFR 1.104(d)(2), the Applicant respectfully requests the Examiner provide such supporting facts and evidence in the form of an affidavit, so that, if necessary, the Applicant may explain the reference – especially in light of a motivation analysis.

CONCLUSION

In view of the foregoing remarks, the Applicant believes all of the claims currently pending in the Application to be in a condition for allowance. The Applicant, therefore, respectfully requests that the Examiner withdraw all rejections and issue a Notice of Allowance for all pending claims.

The Applicant requests a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,

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Amendment - 14 of 14
EUS/JIP/04-8873


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